

## LEGISLATIVE BILL 1249

Approved by the Governor April 13, 2006

Introduced by Landis, 46

AN ACT relating to natural gas; to amend sections 57-1301, 57-1302, 57-1303, 57-1304, 57-1305, 57-1306, 57-1307, 66-1801, 66-1804, 66-1852, and 75-109.01, Reissue Revised Statutes of Nebraska, and section 13-2802, Revised Statutes Cumulative Supplement, 2004; to change provisions relating to the State Natural Gas Regulation Act; to provide and change powers and duties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 13-2802, Revised Statutes Cumulative Supplement, 2004, is amended to read:

13-2802 Whenever creation of a municipal county is proposed involving a city of the metropolitan class, the interjurisdictional planning commission shall include in its plan a recommendation with regard to the territory within which any metropolitan utilities district shall have and may exercise the power of eminent domain pursuant to subsection (2) of section 14-2116. The plan shall further include a recommendation with regard to the territory which shall be deemed to be within the corporate boundary limits or extraterritorial zoning jurisdiction of a municipality or a municipality dissolved by the creation of the municipal county for purposes of ~~sections 57-1301 to 57-1307~~ the State Natural Gas Regulation Act. The question of creation of the municipal county shall not be submitted to a vote under section 13-2810 until a law adopting the provisions required by this section has been enacted.

Sec. 2. Section 66-1801, Reissue Revised Statutes of Nebraska, is amended to read:

66-1801 Sections 66-1801 to 66-1857 and sections 5 to 11 of this act shall be known and may be cited as the State Natural Gas Regulation Act.

Sec. 3. Section 66-1804, Reissue Revised Statutes of Nebraska, is amended to read:

66-1804 (1) The commission shall have full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Except as provided in the Nebraska Natural Gas Pipeline Safety Act of 1969, and notwithstanding any other provision of law, such power, authority, and jurisdiction shall extend to, but not be limited to, all matters encompassed within the State Natural Gas Regulation Act, ~~and sections 57-1301 to 57-1307.~~

(2) The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission.

Sec. 4. Section 66-1852, Reissue Revised Statutes of Nebraska, is amended to read:

66-1852 (1) ~~Except as provided in sections 57-1301 to 57-1307 as those statutes govern jurisdictional utilities and metropolitan utilities districts~~ otherwise expressly authorized in the State Natural Gas Regulation Act, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.

(2) ~~This~~ The prohibition in subsection (1) of this section shall not apply in any area in which two or more jurisdictional utilities share authority to provide natural gas within the same territory under franchises issued by the same city.

Sec. 5. Section 57-1301, Reissue Revised Statutes of Nebraska, is amended to read:

~~57-1301~~ Whenever any city ~~of the primary, first, or second class or village~~ is furnished natural gas pursuant to a franchise agreement with an ~~investor-owned natural gas~~ a jurisdictional utility, a metropolitan utilities district shall not solicit such city ~~or village~~ to enter into a franchise agreement or promote discontinuance of natural gas service with the utility, unless a specific invitation to submit a proposal on such a franchise has been formally presented to the board of directors of the metropolitan utilities district. For purposes of this section, a specific invitation to submit a

proposal ~~shall mean~~ means a resolution adopted by a city council of a city of the primary, first, or second class or the board of trustees of a village the governing body of the city.

Whenever a specific invitation to submit a proposal is received by the board of directors of a metropolitan utilities district, the invitation will be considered by the board at its next regularly scheduled monthly meeting.

Sec. 6. Section 57-1302, Reissue Revised Statutes of Nebraska, is amended to read:

~~57-1302~~ Sections ~~57-1303 to 57-1307~~ 5 to 11 of this act shall be applicable to an ~~investor-owned natural gas~~ a jurisdictional utility only when it is operating in a county in which there is located the natural gas service area, or portion of the natural gas service area, of a metropolitan utilities district and only with regard to matters arising within any such county. Within the limits of a municipal county, the provisions of sections ~~57-1304 to 57-1307~~ 5 to 11 of this act shall be applicable to the extent and in the manner provided by the Legislature as required by section 13-2802.

Sec. 7. Section 57-1303, Reissue Revised Statutes of Nebraska, is amended to read:

~~57-1303~~ No ~~investor-owned natural gas~~ jurisdictional utility or metropolitan utilities district may extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services unless it is in the public interest to do so. In determining whether or not an extension or enlargement is in the public interest, the district or the utility shall consider the following:

- (1) The economic feasibility of the extension or enlargement;
- (2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the ~~investor-owned natural gas~~ jurisdictional utility;
- (3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;
- (4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and
- (5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

Sec. 8. Section 57-1304, Reissue Revised Statutes of Nebraska, is amended to read:

~~57-1304~~ In determining whether an enlargement or extension of a natural gas service area, natural gas mains, or natural gas services is in the public interest pursuant to section ~~57-1303~~ 7 of this act, the following shall constitute rebuttable presumptions:

- (1) Any enlargement or extension by a metropolitan utilities district within a city of the metropolitan class or its extraterritorial zoning jurisdiction is in the public interest;
- (2) Any enlargement or extension by an ~~investor-owned natural gas~~ a jurisdictional utility within a city other than a city of the primary, first, or second class or village metropolitan class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest; and
- (3) Any enlargement or extension by a metropolitan utilities district within its statutory boundary or within a city ~~of the first or second class or village~~ other than a city of the metropolitan or primary class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest.

Any enlargement or extension by a metropolitan utilities district within the boundaries of a city of the metropolitan class involving the exercise of the power of eminent domain pursuant to subsection (2) of section 14-2116 shall, by reason of such exercise, be conclusively determined to be in the public interest.

Sec. 9. Section 57-1305, Reissue Revised Statutes of Nebraska, is amended to read:

~~57-1305~~ A metropolitan utilities district or ~~investor-owned natural gas~~ jurisdictional utility shall not extend duplicative or redundant interior natural gas mains or natural gas services into a subdivision, whether residential, commercial, or industrial, which has existing natural gas utility infrastructure or which has contracted for natural gas utility infrastructure with another utility.

Sec. 10. Section 57-1306, Reissue Revised Statutes of Nebraska, is amended to read:

~~57-1306~~ If the investor-owned natural gas (1) Except as provided in subsections (2) and (3) of this section, no jurisdictional utility or the metropolitan utilities district disagrees with a determination by an

~~investor-owned natural gas utility or a metropolitan utilities district that a proposing to extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services after the effective date of this act shall undertake or pursue such extension or enlargement until the proposal has been submitted to the commission for its determination that the proposed extension or enlargement is in the public interest. Any proposal for extension or enlargement shall be filed with the commission, and the commission shall promptly make such application public in such manner as the commission deems appropriate. The commission shall schedule the matter~~ ~~the matter may be submitted to the Public Service Commission for hearing and determination in the county where the extension or enlargement is proposed, and the matter shall be subject to the applicable procedures provided in the State Natural Gas Regulation Act and sections 75-112, 75-129, and 75-134 to 75-136. In making a determination whether a proposed extension or enlargement is in the public interest, the commission shall consider the factors set forth in sections 7 and 8 of this act.~~ ~~57-1303 and 57-1304. The commission shall have no jurisdiction over a metropolitan utilities district or natural gas utility beyond the determination of disputes brought before it under sections 57-1301 to 57-1307. Ratepayers of the investor-owned natural gas jurisdictional utility or the metropolitan utilities district shall have the right to appear and present testimony before the commission on any matter submitted to the commission under sections 57-1301 to 57-1307~~ 5 to 11 of this act and shall have such testimony considered by the commission in arriving at its determination.

(2) If any metropolitan utilities district proposes to extend or enlarge its system within the corporate boundaries of the city of the metropolitan class it serves or within the boundaries of the extraterritorial zoning jurisdiction of such city, the metropolitan utilities district may pursue such extension or enlargement without the need for commission approval or the requirement to file and request permission to pursue such extension or enlargement.

(3) If no person or entity has filed with the commission a protest alleging that the proposed extension or enlargement is not in the public interest within fifteen business days after the date upon which the application was made public, the enlargement or extension shall be conclusively presumed to be in the public interest and the jurisdictional utility or metropolitan utilities district may proceed with the extension or enlargement without further commission action.

Sec. 11. Section 57-1307, Reissue Revised Statutes of Nebraska, is amended to read:

~~57-1307~~ All books, records, vouchers, papers, contracts, engineering designs, and any other data of the metropolitan utilities district relating to the public interest of an extension or enlargement of natural gas mains or natural gas services or relating to natural gas service areas, whether in written or electronic form, shall be open and made available for public inspection, investigation, comment, or protest upon reasonable request during business hours, except that such books, records, vouchers, papers, contracts, designs, and other data shall be subject to section 84-712.05. Any books, records, vouchers, papers, contracts, designs, or other data not made available to the metropolitan utilities district or ~~an investor-owned natural gas jurisdictional utility~~ with regard to a proceeding before the commission regarding matters arising pursuant to sections 5 to 11 of this act shall not be considered by the Public Service Commission commission in determining whether an enlargement or extension is in the public interest.

Sec. 12. Section 75-109.01, Reissue Revised Statutes of Nebraska, is amended to read:

75-109.01 Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

(1) Common carriers, generally, pursuant to sections 75-101 to 75-158;

(2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;

(3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

(4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;

(5) Motor carrier registration and safety pursuant to sections 75-301 to 75-322, 75-369.03, 75-370, 75-371, 75-383, and 75-384;

(6) Pipeline carriers and rights-of-way pursuant to the State Natural Gas Regulation Act and sections 57-1301 to 57-1307 and 75-501 to 75-503;

(7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

(8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;

(10) Water service pursuant to the Water Service Regulation Act; and

(11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Sec. 13. Original sections 57-1301, 57-1302, 57-1303, 57-1304, 57-1305, 57-1306, 57-1307, 66-1801, 66-1804, 66-1852, and 75-109.01, Reissue Revised Statutes of Nebraska, and section 13-2802, Revised Statutes Cumulative Supplement, 2004, are repealed.